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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,665	01/06/2006	Peter Grabau	1175/75701	3086

7590 07/27/2009  
Donald S Dowden  
Cooper & Dunham  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER
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GORDON, STEPHEN T

ART UNIT	PAPER NUMBER
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3612

MAIL DATE	DELIVERY MODE
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07/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,665	<b>Applicant(s)</b> GRABAU, PETER	
	<b>Examiner</b> /Stephen Gordon/	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3-12, 14-18, 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 13 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 3-12, 14-18, and 20-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicant timely traversed the restriction (election) requirement in the reply filed on 5-11-09.

Applicant should note, after further review it was determined that claims 12 and 21 additionally read on non-elected species and are withdrawn.

2. Applicant's election with traverse of group I and species D in the reply filed on 5-11-09 is acknowledged. The traversal is on the ground(s) that the defined invention groups are sufficiently related that separate searches are not required. This is not found persuasive because while it may or may not be that the defined groups would require similar searches, the defined inventions are deemed to define sufficiently divergent subject matter that the requirement is warranted.

The requirement is still deemed proper and is therefore made FINAL.

3. It is requested that applicant cancel at least non-elected claims 14-18 in response to this action to facilitate the issue process if the application is ultimately allowed.

4. Applicant should note, the two WO references cited on page 1 and page 2 of the instant specification are not readily available to the examiner. Copies of these references should be included with any response to this action.

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5. The abstract of the disclosure is objected to because it contains the term “means” throughout (i.e. legal phraseology). Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities: page 8 – lines 10-11 (as counted from the top of the page and not as numbered), “according to claim 14” is improper and should be deleted.

Page 12 – second to last line, the term "steel" is misspelled.

Page 14 – lines 8 and 9 (as counted from the top of the page and not as numbered), “, 30 or even 30 metres” is somewhat confusing and should apparently be –or even 30 meters--.

Appropriate correction is required.

7. Claims 1-2, 13, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is generally very confusing and not understood. Specifically, the claim preamble recites a method of use, but no active method steps are present in the claim.

Additionally, "the longitudinal central axis" in line 4 lacks clear antecedent basis.

Claim 2, “the distance between” and “the radius” lack clear antecedent basis.

Claim 13, “the prestressed state” is confusing and lacks clear antecedent basis.

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Claim 19, note presence of confusing terms “the distance between the blade tip and the longitudinal central axis” and “the radius of the blade root” similar to those discussed above.

8. The failure to apply the prior art to claims 1, 2, 13, and 19 should not be construed as an indication of allowable subject matter. Because these claims so seriously fail to meet the requirements of 35USC112 – second paragraph for the reasons stated above, it is not possible at this time to apply the prior art to the claims in deciding patentability without disregarding portions of the express wording of the claims and thus resorting to speculation and conjecture as to the particular invention defined therein. See Ex parte Lyell, 17 USPQ2d 1548, 1552.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen Gordon/  
Primary Examiner  
Art Unit 3612

stg